

KENNETH AND ERA TWETEN

IBLA 80-428

Decided May 7, 1980

Appeal from decision of the New Mexico State Office, Bureau of Land Management, denying reinstatement of oil and gas leases NM 13798-C, 13800-B.

Affirmed.

1. Oil and Gas Leases: Termination -- Oil and Gas Leases:
Reinstatement

Reasonable diligence generally requires mailing the rental payment sufficiently in advance of the anniversary or due date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental payment on the anniversary date of the lease does not constitute reasonable diligence.

2. Oil and Gas Leases: Reinstatement

Under 30 U.S.C. § 188(c) (1976) and 43 CFR 3108.2-1(c), the Department has no authority to reinstate an oil and gas lease terminated by operation of law for failure to make timely payment of annual rental unless rental payment has been made or tendered within 20 days of the due date.

APPEARANCES: Kenneth and Era Tweten, pro sese.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

This appeal is from a decision dated January 24, 1980, by the New Mexico State Office, Bureau of Land Management (BLM), denying reinstatement of oil and gas leases NM 13798-C and 13800-B. Appellants' leases terminated by operation of law for failure to pay the annual rental on or before June 1, 1979.

Appellants' rental check was received by the State Office on June 22, 1979. On September 6, 1979, appellants filed a petition for reinstatement alleging that they mailed the rental check on June 1, 1979.

BLM denied the petition because it found that appellants could not comply with the prerequisites for reinstatement as prescribed by 30 U.S.C. § 188(c) (1976), and 43 CFR 3108.2-1(c)(2).

Appellants again state on appeal that their payment letter was mailed on June 1, 1979. They contend that they acted with reasonable diligence and suggest that a variety of events having to do with the processing of the mail could have caused the 3-week delay until their payment reached the State Office.

[1] Reasonable diligence generally requires mailing the rental payment sufficiently in advance of the anniversary or due date to account for normal delays in collection, transmittal, and delivery of the mail. 43 CFR 3108.2-1(c)(2). This Board has repeatedly held that mailing the rental payment on the anniversary date of the lease does not constitute reasonable diligence. See, e.g., Ronald C. Hill, 38 IBLA 315 (1978); Hubert W. Scudder, 36 IBLA 191 (1978); David R. and Darla L. Smith, 33 IBLA 63 (1977); Adolph Muratori, 31 IBLA 39 (1977); Henry Carter, 24 IBLA 70 (1976); William N. Cannon, 20 IBLA 361 (1975). Thus, appellants plainly failed to act in a reasonably diligent manner.

[2] In any event, the Board is without authority to reinstate these leases. Appellants' leases terminated automatically when rental payment was not received in the New Mexico State Office by the close of business on June 1, 1979, the anniversary date of these leases. Under 30 U.S.C. § 188(c) (1976), as implemented by 43 CFR 3108.2-1(c), the Department has no authority to reinstate an oil and gas lease so terminated unless rental has been paid or tendered at the proper office within 20 days of the due date and is precluded by law from granting reinstatement in any case where this condition has not been met. Alice M. Conte, 46 IBLA 312 (1980). ^{1/} Apostolos Paliombeis, 30 IBLA 153 (1977); Vern H. Bolinder, 30 IBLA 26 (1977); Oil Resources, Inc., 28 IBLA 394, 84 I.D. 91 (1977); A. E. White, 28 IBLA 91 (1976); Albert DiGiulio, Jr., 26 IBLA 169 (1976); Merilyn K. Buxton, 24 IBLA 269 (1976). Appellants did not pay rental on these leases until June 22, 1979, a Friday, more than 20 days after the

^{1/} 30 U.S.C. § 188(c) (1976) provides that where an oil and gas lease "terminated by operation of law under this section for failure to pay on or before the anniversary date the full amount of the rental due, but such rental was paid or tendered within 20 days thereafter," the Secretary may reinstate the lease under certain conditions (emphasis added).

anniversary date, and therefore the Department is without authority to consider their application for reinstatement of the leases.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman
Administrative Judge

We concur:

Joan B. Thompson
Administrative Judge

Douglas E. Henriques
Administrative Judge

